

§ 27.40

(f) There is no right to appear personally before the Environmental Appeals Board.

(g) There is no right to appeal any interlocutory ruling by the presiding officer.

(h) In reviewing the initial decision, the Environmental Appeals Board shall not consider any objection that was not raised before the presiding officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Environmental Appeals Board that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Environmental Appeals Board shall remand the matter to the presiding officer for consideration of such additional evidence.

(j) The Environmental Appeals Board may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the presiding officer in any initial decision.

(k) The Environmental Appeals Board shall promptly serve each party to the appeal with a copy of the decision of the Environmental Appeals Board and a statement describing the right of any person determined to be liable for a civil penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Environmental Appeals Board serves the defendant with a copy of the Environmental Appeals Board's decision, a determination that a defendant is liable under § 27.3 is final and is not subject to judicial review.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5327, Feb. 13, 1992]

§ 27.40 Stay ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Environmental Appeals Board a written finding that continuation of the administrative process described in this part with respect to a

40 CFR Ch. I (7–1–06 Edition)

claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Environmental Appeals Board shall stay the process immediately. The Environmental Appeals Board may order the process resumed only upon receipt of the written authorization of the Attorney General.

[57 FR 5327, Feb. 13, 1992]

§ 27.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Environmental Appeals Board.

(b) No administrative stay is available following a final decision of the Environmental Appeals Board.

[57 FR 5327, Feb. 13, 1992]

§ 27.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Environmental Appeals Board imposing penalties or assessments under this part and specifies the procedures for such review.

[57 FR 5327, Feb. 13, 1992]

§ 27.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 27.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 27.42 or 27.43, or any amount agreed upon in a compromise or settlement under § 27.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.